



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



VIA FACSIMILE AND CERTIFIED MAIL

LETTER OF DEFICIENCY
WET 2004-016

April 23, 2004

Mr. John Braga
Ms. Nancy Silva
P.O. Box 944
Portsmouth, RI 02871

RE: DES Wetlands File #2003-01624, Route 115-A, Jefferson

Dear Mr. Braga and Ms. Silva

On April 12, 2004, personnel from the Department of Environmental Services ("DES") conducted an inspection of the above-referenced property, more specifically referenced on Town of Jefferson Tax Map 8 as Lots 3 and 11 (the "Property"). The purpose of the inspection was to determine compliance with RSA 482-A and NH Code of Admin. Rules Wt 100-700.

During the inspection the following deficiencies were documented:

1. Dredge spoils were observed outside a right-of-way, on property owned by another (the Archeological Conservancy). Pursuant to Wt 303.05 (q)(2), a written release is required from all owners of the property on which the work will be done. DES records indicate that no such written release was obtained.
2. Pursuant to Wt 303.05(q)(7), dredge materials shall be placed out of RSA 482-A jurisdiction. Approximately 7,000 square feet of dredge spoils were observed as fill in wetlands on Archeological Conservancy property and on the Braga/Silva property.
3. A Notification of Routine Roadway and Railway Maintenance Activities ("Notification") was filed with DES on July 28, 2003. Pursuant to NH Admin. Rule Wt 303.05(q), the Notification is to be filed by an Activity Sponsor, an entity defined as the NH Department of Transportation, a municipality, or a maintenance department. DES records indicate that the Notification was not filed by any such entity.
4. Erosion and sediment controls were not installed in accordance with *Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire* at the locations where the culverts were replaced.

In response, you are requested to take the following actions:

1. By May 7, 2004, submit an after-the-fact standard dredge and fill application to DES for the wetland impacts occurring as a result of re-grading the right-of-way and the installation of the culverts within the right-of-way.
2. Include with the application a restoration plan for DES review and approval. Have the restoration plan prepared by a qualified environmental consultant, and include provisions to remove the dredge spoils

placed in wetlands jurisdiction on property owned by the Archeological Conservancy and the Braga/Silva property. Include provisions to re-install the culverts. Submit the following with the restoration plan:

- a. A plan with dimensions, drawn to scale, showing:
 - i. Existing conditions, with wetland boundaries;
 - ii. Proposed conditions after re-establishing jurisdictional areas;
 - iii. Location and extent of dredge materials located on Archeological Conservancy property;
 - iv. An identification of which dredge piles can be immediately removed on Archeological Conservancy property and the Braga/Silva property as part of immediate restoration and relocated to upland or re-used within right-of-way; and
 - v. An identification of which piles are considered archeologically sensitive by the NH Division of Historical Resources and are not to be removed until further examination is completed and a written release obtained from the NH Division of Historical Resources, as agent for the Archeological Conservancy;
- b. A detailed description of the proposed means of erosion control (silt fence, hay bales, *etc.*) and stabilization of the restoration area;
- c. A detailed description of the proposed means for the stabilization and re-vegetation of the disturbed road embankments; and
- d. A description of the proposed construction sequence and methods for accomplishing restoration and anticipated restoration compliance date.

3. Retain a qualified environmental consultant to supervise the implementation of the restoration plan and to submit restoration progress reports.

4. Implement the restoration plan only after receiving written approval and as conditioned by DES.

RSA 482-A, the New Hampshire Wetlands law, was enacted to protect and preserve wetlands and surface waters from unregulated despoliation. Prior to dredging, filling, or construction in and adjacent to wetlands or surface waters, an individual is required to obtain a permit. If work is done without a permit, or in excess of a permit, this is considered a violation of RSA 482-A. Failure to respond to this Letter of Deficiency in a timely and complete manner may be construed as noncompliance by the receiving party.

DES personnel may conduct another inspection at a later date to determine whether you have come into and are maintaining full compliance with the applicable statute and rules.

Issuance of this letter shall not preclude further enforcement by DES. Failure to comply with RSA 482-A will result in enforcement by DES, including but not limited to the issuance of fines, administrative orders, or referral to the New Hampshire Office of the Attorney General for prosecution of civil or criminal penalties. If an order is issued to you, it may also be recorded with the Registry of Deeds as an encumbrance against your property.

All documents submitted in response to this Letter of Deficiency should be addressed as follows:

Linda Magoon
Wetlands Bureau
Department of Environmental Services
29 Hazen Drive
PO Box 95
Concord, NH 03302-0095

Should you have any questions regarding this letter, or wish to arrange a meeting, please contact Linda Magoon at (603) 271-4056 or by e-mail at lmagoon@des.state.nh.us.

Sincerely,

COPY 

Collis G. Adams, CWS
Administrator
Wetlands Bureau

CERTIFIED MAIL 7002 3150 0001 5411 2361

cc: Rene Pelletier, Manager, Land Resources Management Program
Gretchen R. Hamel, Administrator, DES Legal Unit ✓
David Govatski, Chairman, Jefferson Conservation Commission
Jefferson Board of Selectmen
Richard Morneau
Richard Boisvert, NH Division of Historical Resources
USACOE